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No. 350

In the Supreme Court of the United States

OCTOBER TERM, 1929

THE BASSICK MANUFACTURING COMPANY,
PETITIONER
v.
THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MOTION OF THE UNITED STATES TO REMAND AND BRIEF IN SUPPORT THEREOF

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MOTION OF THE UNITED STATES TO REMAND

Comes now the United States, the respondent herein, by the Solicitor General, and moves the Court to remand the above entitled case to the Court of Claims for additional findings of fact as hereinafter set forth, in the event that this Court is of the opinion that the decision of the Court of Claims should not be affirmed upon the record as presented.

This case raises the question whether petitioner established in the Court of Claims that gascolators manufactured and sold by it during the period from September 1, 1922, to February 28, 1926, and which were adaptable for use on automobile en-

gines and other engines, were not parts or accessories for automobiles sold to any person other than a manufacturer or producer of automobiles within the meaning of Section 900 (3) of the Revenue Act of 1921.

The Court of Claims, in its disposition of the case, made certain findings of fact and concluded that the petitioner was liable for the taxes in question, and thereupon rendered a judgment dismissing the petition. The following are quotations from the findings (R. 10–11):

III

> During the times hereinafter mentioned plaintiff was engaged in the business of manufacturing and selling gascolators (gasoline strainers).
>
> A gascolator is a device designed to be placed between the fuel tank and the carburetor of any internal combustion motor for the purpose of taking out dirt, water, grit, or any foreign matter from the gasoline before it gets to the carburetor, preventing the carburetor from becoming inoperative or not functioning properly. Gascolators were sold by plaintiff to and used, during the period October 31, 1922, to March 31, 1926, by airplane, farm implement, automobile, and industrial machinery manufacturers. Said gascolators were adaptable for use on internal combustion engines, which are used to drive tractors, airplanes, industrial machinery, motor boats, marine boats, and auto-

mobiles, and were interchangeable on any combustion engine dependent on the size of the fuel pipe, and the adapter which is a device to connect the fuel pipe to the gascolator.

IV

During the period October 31, 1922, to March 31, 1926, said gascolators were also sold to companies that only manufactured farm implements and industrial machinery.

The difference in the gascolators sold by plaintiff was in the size of the adapter, which connects the gascolator to the fuel pipe. The gascolator could be attached to the fuel pipe without the adapter by swedging the fuel pipe to the gascolator. Plaintiff issued in November, 1926, a catalogue wherein said gascolator and its various parts are described. Said catalogue advertises a "Ford gascolator," a "Franklin gascolator," and a special "Buick gascolator," and quotes prices therefor. It does not appear from the evidence what, if any, part of the taxes sought to be recovered herein were paid for gascolators sold to automobile manufacturers, or for uses other than for automobiles.

There is no other finding as to the particular purpose for which the petitioner designed its gascolators or as to whom the petitioner sold the gascolators in question. The Government contends that the Court of Claims did not make the following

material findings which were demanded by the record in that court:

(1) The petitioner has not shown that its gascolators on which tax was assessed were not designed especially for use on automobiles.

(2) The petitioner has not shown that its sales were not chiefly to dealers in automobile accessories or that the sales to other classes of dealers were usual or common.

(3) The petitioner has not shown that the great bulk of its sales were not made to persons other than a manufacturer or producer of automobile trucks, automobile wagons, other automobiles, and motor cycles.

Wherefore, it is respectfully prayed that, if this Court is of the opinion, because of incomplete findings or the vagueness of the findings, that the judgment below should not be affirmed, an order be entered remanding said cause to the Court of Claims for findings upon each of the facts hereinbefore set forth, and upon such further and additional facts, if any, as this Court may deem necessary.

Respectfully submitted.

CHARLES E. HUGHES, JR.,
Solicitor General.

JANUARY, 1930.

BRIEF ON MOTION TO REMAND

The evidence in the Court of Claims consists solely of a stipulation as to formal matters and the testimony of an employee of the petitioner. We submit that nothing in the testimony of this witness goes to show that the gascolators upon which the taxes were assessed were not designed and sold chiefly for use as a component part of automobiles.

The witness did testify that they could be used on motors driving tractors, airplanes, and industrial machinery, and power plants, but there was nothing in his testimony negativing the possibility that such uses were infrequent. He did not testify that the bulk of sales were not to dealers in automobile accessories and the like, although in answer to a few specific questions he showed that some sales were made to concerns engaged in manufacturing farm implements and industrial machinery. (R. 12.) The number or volume of such sales was in no way indicated.

As we have pointed out in our brief on the merits, the assessment of the tax by the Commissioner is *prima facie* evidence of its correctness, and the burden is upon the petitioner to prove facts showing that it is invalid. We submit that an examination of the record in the Court of Claims discloses that

the petitioner has failed to sustain this burden; that the findings of the Court of Claims, construed in the light of the testimony, are insufficient to warrant a recovery by the petitioner; and their vagueness should not lead to a reversal of the decision of the Court of Claims.

The Government's motion to remand for additional findings of fact should be granted unless the decision of the Court of Claims is affirmed upon the existing findings of fact.

Respectfully submitted.

CHARLES E. HUGHES, Jr.,
Solicitor General.

CLAUDE R. BRANCH,
Special Assistant to the Attorney General.

RALPH C. WILLIAMSON,
Attorney.

JANUARY, 1930.

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